

Chapter 8 – Communications

Campaigns reach the voters through communications including television, radio and Internet advertising, mailers, billboards, precinct walking and flyers. The Political Reform Act requires reporting of most payments in connection with political communications and requires “paid for by” disclaimers on ads placed by general purpose committees on candidates and measures to inform voters who is paying for a communication.

This chapter reviews common communications in a campaign and how payments for the communications are required to be reported. The next chapter discusses the disclaimer requirements that apply to political communications.

A. Payments for Communications

Nonmonetary Contributions. Generally speaking, when a general purpose committee pays for a communication supporting or opposing a candidate or ballot measure, if the general purpose committee was coordinating with the candidate or measure committee, the general purpose committee has made a nonmonetary contribution to that committee.

Reporting: When a general purpose committee makes payments for a communication that is a contribution, both the general purpose committee and the candidate or committee receiving the benefit report the contribution on a campaign statement.

Independent Expenditures. A general purpose committee may also make “independent expenditures” supporting or opposing a candidate or measure. If a general purpose committee spends money for communications to support or oppose a measure without coordinating with the affected candidate or ballot measure committee, the general purpose committee’s expenditures are considered to be independent expenditures.

Reporting: When a general purpose committee makes payments for communications that are independent expenditures, only the general purpose committee will report the payments on its campaign statements. Committees that are the beneficiaries of independent expenditures do not report them. A general purpose committee making independent expenditures on a candidate or a ballot measure must file reports, including 24-hour reports, verifications, and supplemental independent expenditure reports. (See Chapter 11.)

There is an exception for certain “member communications” sent solely to an entity or organization’s employees, shareholders, or members, as discussed below.

B. Coordinated Communications

When a general purpose committee pays for a communication that is coordinated with, or “made at the behest of” a candidate’s committee or ballot measure committee, the communication is a nonmonetary contribution to that committee.

Coordination – “Made at the Behest”

“Coordinated” or “made at the behest” means made at the request, suggestion, or direction of, or in cooperation or consultation with the committee for whose benefit the expenditure is made.

A payment is coordinated with or “made at the behest” of a candidate or ballot measure committee under each of the following:

- It is made at the request, suggestion, or direction of, or in cooperation, consultation or coordination with the committee for whose benefit the expenditure is made.
- The committee or their agents have made or participated in making any decision about the content, timing, location, mode, intended audience, distribution, or placement of the communication.
- The creator, producer, or person paying for the communication has had discussion and agreement with the committee, or its agents, regarding the content, timing, location, mode, intended audience, distribution, or placement of the communication.

An expenditure is **presumed to be coordinated** or “made at the behest of” a committee if:

- **Committee’s Needs.** It is based on information about the committee’s campaign needs or plans provided to the expending person by the committee.
- **Agent.** It is made by or through any agent of the committee in the course of the agent’s involvement in the current campaign.
- **Common Consultants.** The person making the expenditure retains the services of a person who provides the committee with professional services related to the campaign or fundraising strategy for that same election.
- **Republication.** The communication reproduces, republishes, or disseminates a communication designed, produced, paid for, or distributed by the committee.

However, an expenditure is **not coordinated** or made at the behest of a candidate or committee merely because:

- **Interview.** A person interviews the committee or committee’s agent on issues affecting the person making the expenditure.
- **Committee Material.** The person making the expenditure has obtained a photograph, position paper, press release, or similar material from the committee or the committee’s agents.
- **Public Appearance.** The person making the expenditure has invited committee representatives to make a public appearance before the person’s members, employees, shareholders, or their families provided that there is no discussion with the committee prior to the expenditure related to details of the expenditure.

FPPC Regulation 18225.7, summarized above, specifies when a communication is considered independent or made at the behest of a committee. Because the determination is based on specific facts, persons may contact the FPPC for guidance.

If a general purpose committee places an online advertisement supporting a candidate and the advertisement, without consultation or coordination with the candidate or candidate's committee, links to the candidate's or committee's web page or other information posted by the candidate or committee, the presence of the link itself, does not mean that the advertisement was coordinated with or "made at the behest of" the candidate.

If two or more general purpose committees exchange information between or among themselves, subsequent expenditures by each committee are not, merely by reason of that exchange, considered to be coordinated with or "made at the behest of" the other committee.

Ex. 8.1 - A general purpose recipient committee printed campaign literature stating, "Vote for Banks." The communication included Banks' photograph, which was obtained from the Banks re-election committee's website. The general purpose committee did not in any other way coordinate with the Banks campaign in producing the campaign literature. The general purpose committee made an independent expenditure, not a contribution to Banks' committee.

On the other hand, if the general purpose committee contacted Banks' political consultant and arranged for a professional photographer to meet with them for the purpose of taking photographs for the mailer, the general purpose committee would be making a nonmonetary contribution to Banks' committee.

Ex. 8.2 - A local tax measure would increase the benefits provided to police and firefighters. Representatives from both of the general purpose committees that represent the police and firefighters meet to review polls on the likelihood the measure will pass. Each committee then makes separate expenditures in connection with supporting the measure. Under these facts, neither PAC is making a contribution to the other.

C. Independent Expenditures

When a general purpose committee makes an expenditure for a communication supporting or opposing a candidate or ballot measure that is not coordinated with the candidate or measure committee, it is making an independent expenditure. An independent expenditure is a payment for a communication that:

- **Expressly advocates** the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a **clearly identified measure**, and
- The communication is **not coordinated** with or "made at the behest" of the affected committee.

Clearly Identified

A communication clearly identifies a candidate or ballot measure when the candidate's name, photograph, or status as a candidate or officeholder is used, or the measure's name, popular title, or official title is used. Some flyers may mention a group of candidates by some well-defined characteristic of the group. Even if no specific names are used, these too may be communications which *clearly identify* candidates.

Ex 8.3 – A general purpose committee paid \$4,000 for a newspaper ad stating "Vote for Measure A." The communication expressly advocates support for a clearly identified ballot measure. It must be reported by the general purpose committee either as a contribution or

independent expenditure, depending upon whether it was coordinated with a primarily formed ballot measure committee.

Later, the same general purpose committee paid \$2,000 for post card-sized flyers that simply stated, "Vote on Election Day." This communication is not reported as a contribution or independent expenditure because it did not expressly advocate support of or opposition to a clearly identified measure.

Express Advocacy

A communication expressly advocates support or opposition of a clearly identified ballot measure under the following scenarios:

- **Magic Words.** The communication uses words such as "vote for," "elect," "cast your ballot," or "defeat."
- **Unambiguously Urges.** The communication is made within 60 days prior to an election and the communication refers to a clearly identified candidate or ballot measure so that when, taken as a whole, it unambiguously urges a particular result in an election. The message must be susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate or ballot measure.

A committee or person making independent expenditures must be aware that the communication cannot be coordinated with the affected candidate or measure committee. If there is coordination, the payments are reported as contributions.

D. Other Communications

Endorsements

An endorsement of a candidate or measure may become a contribution or an independent expenditure when a payment is made in connection with the endorsement.

Ex 8.4 - The president of a police officers' association announces at its annual meeting that the association endorses county Measure Y. Merely making an oral endorsement is not a contribution or independent expenditure to the committee supporting Measure Y.

Closer to the election, in coordination with the committee formed to support Measure Y, the association mails a special flyer to the voters announcing its endorsement. The association has now made a nonmonetary contribution to the committee.

Social Media – Internet Communications:

Uncompensated Internet activity by an individual, such as sending or forwarding electronic messages, social networking, blogging, creating or hosting a website, to support or oppose a candidate or ballot measure is not considered a contribution or expenditure.

When a PAC blogs or posts communications that expressly advocate a candidate or measure, the advertisement is subject to disclaimer requirements. Depending upon the communication and the cost to prepare the communication, a contribution will be reportable.

Ex. 8.5 - A PAC may establish a social media account (e.g., Facebook, Twitter, Tumblr) to engage in campaign activity, such as posts or tweets to support candidates and ballot measures. See Chapter 9 for information about required disclosure for advertisements.

Communications Identifying State Candidates

If a general purpose committee makes a payment or a promise of a payment totaling \$50,000 or more for a communication disseminated within 45 days of an election that clearly identifies a candidate for elective state office, but does not expressly advocate the election or defeat of the candidate, the committee must report the payment. The committee must file Form E-530 with the Secretary of State within 48 hours.

If the communication is made at the behest of the candidate, the general purpose committee is subject to the political party contribution limits of \$34,000 per contributor. Once a general purpose committee receives a contribution in excess of that contribution limit, the committee may not make a payment for such a communication. (See Chapter 5.)



Ex 8.6 - Two weeks before a 2016 election in which State Senator Ramos will be listed on the ballot, a general purpose committee pays more than \$50,000 for billboard ads in her district stating "Thank you Senator Ramos for your support of high speed rail." The ads do not advocate her election, but include her name and image and were approved by her. The general purpose committee must file an E-530 report and is subject to a contribution limit of \$34,000 in a calendar year from a single source.

Ballot Measure Ad – Paid Spokesperson

If a general purpose committee making an ad supporting or opposing a ballot measure ad pays \$5,000 or more to an individual to appear in the ad, the committee must include a disclaimer on the ad saying that individual is being paid for his or her appearance and must file a Paid Spokesperson Report, Form 511. (See Chapter 9.)

E. Non-Contributions

There are some communications that are not considered to be contributions, although payments made by a general purpose committee in connection with these the communications would be reportable expenditures.

Debates

If an organization or entity hosts a debate or other forum and invites at least two opposing candidates or the proponent of a ballot measure and at least one opponent, or their respective representatives, to participate in equal numbers, a payment for the event is not a contribution to the candidate or ballot measure committees.

Ex 8.7 - The League of Women Voters invited the proponent and an opponent of Proposition 31 to speak at a forum. Only the proponent attended. Because both sides of the ballot measure were invited, the cost of the meeting is not a contribution to the committee established to support the measure.

Meetings

A payment made by a bona fide service, social, business, trade, union, or professional organization for reasonable overhead expenses associated with a regularly-scheduled meeting at which a candidate or an individual representing either side of a ballot measure speaks is not a contribution, if the organization pays no additional costs in connection with the speaker's attendance.

Ex. 8.8 - At a union's regularly-scheduled monthly meeting, a representative for the proponent of Proposition 310 was invited to solicit votes. The union did not incur any additional costs in connection with the speaker's presentation and, thus, no contribution was made.

Non-Political Communications

A payment made at the behest of a candidate which is for a communication by the candidate or any other person, is not a contribution to the candidate if the communication:

- Does not contain express advocacy;
- Does not make reference to the candidate's election campaign, or his or her opponent's qualifications for office; and
- Does not solicit contributions to the candidate or to third persons for use in support of or opposition to the candidate.

Voter Registration

A payment made at the behest of a candidate or ballot measure committee as part of voter registration or get-out-the-vote activities is not a contribution if the communication does not expressly advocate support of or opposition to the candidate or ballot measure.

Ex. 8.9 - At the behest of a state candidate, a general purpose committee paid for a nonpartisan voter registration booth at a local fair. No other literature was distributed at the booth. The payment for the voter registration booth was not a contribution to the candidate.

Member Communications

Payments made by an organization or its sponsored committee for a communication that supports or opposes a candidate or ballot measure are not contributions or expenditures as long as the communication is made only to the organization's members, employees, or shareholders, or the families of its members, employees, or shareholders. The payments may not be for general public advertising, such as billboards, newspaper ads, or radio or television ads. If made by the organization's sponsored committee, the committee would report the payments as being made for general member communications.

[Quick Tip] Political party committees have different reporting requirements for member communications.

Payments made by a **political party** for a communication that supports or opposes a candidate or ballot measure are not contributions as long as the communication is distributed only to the party's members, employees, and families of its members and employees. However, the party must report the payments as if they were contributions or independent expenditures.

If a communication is sent to members and nonmembers, the committee may allocate that portion of the costs associated with communicating with nonmembers as a contribution or independent expenditure.

However, if the communication is *inadvertently* sent to nonmembers *and* the costs do not exceed \$100 or 5% of the total cost of the communication, whichever is higher, all of the communication is considered a member communication.

Other communications, such as a sponsoring organization's solicitations for contributions for its committee, are not considered "member communications" and are contributions to the committee.

Ex. 8.10 - A corporation's sponsored PAC sends a mailing supporting a ballot measure to the corporation's shareholders. The mailing is not a contribution to the ballot measure committee whose position is supported or an independent expenditure. Later, at the behest of the ballot measure committee, the PAC sends the mailing to all registered voters in the district where the measure will appear on the ballot. The mailing to the voters is a nonmonetary contribution.

Ex. 8.11 - The California Tree Doctors Association collects and transmits dues earmarked by its members for political purposes to its sponsored committee. In December, the Association sends a special mailing to its members to raise additional funds for the upcoming state elections. The committee must disclose the payments made by the Association for the solicitation mailing on Schedule C of the Form 460 as nonmonetary contributions from the Association (rather than administrative services). The following year, the Association sends a letter to its members recommending candidates running in the upcoming state election. The payments for this mailing qualify as "member communications" and, therefore, are not contributions to the committee or to the candidates. Neither the Association or the candidates must report the costs of the mailing. (Note: If the sponsored committee paid for the member communication the payments would be reported on Schedule E or F of the Form 460.)

Definition of "Member"

A member is any person who, according to a specific provision of an organization's articles or bylaws, has the right to vote for the election of a director or an officer or on a disposition of all or substantially all of the assets of the organization or on a merger or on a dissolution. A member is also any person who is designated in the articles or bylaws as a member and, according to a specific provision of an organization's articles or bylaws, has the right to vote on changes to the articles or bylaws, or pays or has paid membership dues in an amount predetermined by the organization so long as the organization is tax exempt under 26 U.S.C. 501(c). Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

[Quick Tip] People who are only on a mailing or contact list for the organization are not "members" of the organization.

For more information, see Regulation 18531.7 or contact the FPPC.

Ex. 8.12 - The River City Rowing Club's bylaws require payment of membership dues in order to vote for officers of the club. The club also has a mailing list of individuals that do not pay dues, but receive the club's literature. When the club sends a mailer supporting or opposing candidates and measures, they do not send the communication to the mailing list of non-members. Therefore, the mailing qualifies as a "member communication" and the payments made are not contributions or independent expenditures.

Third Party Payments for Member Communications

To meet the exception to the definition of contribution or expenditure, the payment for the communication must be paid by the committee or its sponsor. If a third party makes the payment in coordination with the committee or organization, the payment is considered a contribution or expenditure, subject to any applicable limits and reporting requirements.

Ex. 8.13 - The California Association of Vegetarians has decided to send a campaign brochure supporting the three Green Party members running for statewide office to its members. Upon hearing of the plan, Friends of the California Environment offers to pay for the communication. The total cost of the communication is \$15,000. The payments are made at the behest of each candidate, and each will be featured equally on the flyer. Because the association is not paying for the communication, it does not meet the definition of a "member communication." Friends must report making a contribution to the three candidates of \$5,000 each. Contribution limits apply.

News Stories

A payment for the cost of publishing or broadcasting a news story, commentary, or editorial is not a contribution when the payment is made by a federally-regulated broadcast outlet or a regularly-published newspaper, magazine, or other periodical of general circulation that routinely carries news, articles, and commentary of general interest.

Authority

The following government Code sections and Title 2 regulations provide authority for the information in this chapter.

Government Code Sections [\[Add hyperlink\]](#)

82015	Contribution.
82025	Expenditure.
82031	Independent Expenditure.
82044	Payment.
82047	Person.
85310	Communications Identifying State Candidates.
85312	Communications to Members of an Organization.
85500	Independent Expenditures; 24-Hour Disclosure; Coordination.

Title 2 Regulations [\[Add hyperlink\]](#)

18215	Contribution.
18225	Expenditure (express advocacy, clearly identified).

18227.5 Made at the Behest of (coordination).
18531.7 Payments for Communications – Section 85312 (member communications).
18531.10 Communications Identifying State Candidates.

Cases

Californians for Fair Representation – No on 77 et al., v. Schwarzenegger (2006) 138 Cal.App.4th 15.

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